

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No. 15-md-2666(JNE/FLN)
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

This document relates to:

JOHN W. SMITH, et al.

Plaintiff,

Civil Action No. 0:17-cv-2889-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, John Smith, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1354], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In February of 2017, Mr. John Smith contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the

original surgery.

3. On July 13, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. On October 3, 2017, counsel submitted the Plaintiff Fact Sheet in compliance with Pre Trial Order No. 14.

5. On June 20, 2018, Counsel was informed Plaintiff passed away on March 3, 2018. The Suggestion of Death was filed the same day.

6. Plaintiff's spouse, Janet Smith, is working diligently with a Probate attorney to properly appoint a Personal Representative to pursue the claims of the deceased plaintiff.

7. As a result, Counsel requests additional time to meet the requirements of this Court's Order and the Federal Rules.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice and an additional ninety (90) days be given to allow time for Counsel to proceed with this matter and provide the necessary information in order to file the Motion for Substitution.

RESPECTFULLY SUBMITTED,

BROWN & CROUPPEN, P.C.

Dated: July 18, 2018

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